

**United States District Court
Southern District of New York
Docket #12-CV 6104 (KBF)**

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: OCT 01 2012

Joao Tovar,

Plaintiff

v.

Motion For Leave to Withdraw

Robert Indiana,

Defendant

NOW COMES David A. Lourie, Counsel for Joao Tovar in the above matter, and moves for Leave to Withdraw as Counsel for Joao Tovar.

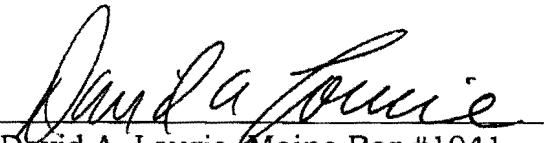
David A. Lourie agreed with Mr. Tovar, and Mark W. Moody, Esq. to act as local counsel to Mr. Tovar, under the direction of Mr. Moody by filing a complaint in the Superior Court of the State of Maine, after an earlier case against Mr. Indiana and several other parties brought in was dismissed for lack of diversity. The case was removed by Defendant to the United States District Court for the State of Maine to deal with issues raised under Federal statutes, and was subsequently transferred to the United States District Court for the Southern District of New York where I am not admitted to practice, and cannot effectively practice.

This Motion is supported by affidavit, and has been served on Mr. Tovar, Counsel for Defendant, and upon Mark Warren Moody, esq., via e-mail, in addition to mailing as stated in the attached Certificate.

Wherefore Counsel for Plaintiff requests that he be permitted to withdraw as Counsel, and that the Court provide Mr. Tovar a reasonable opportunity to

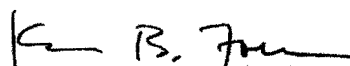
obtain substitute counsel if Mr. Moody is unwilling or unable to enter his appearance.

September 26, 2012


David A. Lourie, Maine Bar #1041
Attorney for Plaintiff Tovar
189 Spurwink Avenue
Cape Elizabeth, Maine 04107
david@lourielaw.com

Application granted. Mr. Lourie terminates.
Counsel shall notify his former
client immediately

SO ORDERED:


HON. KATHERINE B. FORREST
UNITED STATES DISTRICT JUDGE

10/1/12

his obligation to
appear and
report to all
Court
directives. Oct. 5
conference will go
forward as scheduled.

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Joao Tovar,

Plaintiff

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Affidavit

Robert Indiana,

Defendant

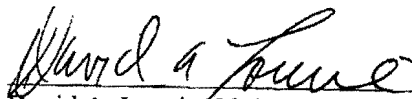
NOW COMES David A. Lourie, and deposes as follows:

1. I am a lawyer licensed to practice in the Courts of the State of Maine.
2. I am not admitted to practice in the State of New York, or in the United States District Court for the Southern District of New York.
3. I was approached by Mark W. Moody, Esq., on behalf of Joao Tovar, to act as "local counsel" in litigation to be brought in the State of Maine upon claims between the same parties dismissed *without prejudice* by the United States Court for the Southern District of New York for lack of diversity among the parties.
4. Mr. Moody stated his belief that a "global settlement" was imminent. I agreed to an hourly rate capped at a percentage of what Mr. Moody was to receive under an agreement with Mr. Tovar which I have never seen.
5. I filed the complaint against Robert Indiana, a resident of the State of Maine, in the Maine Superior Court upon the understanding that Mr. Moody would assist me in prosecuting the claim if it was not settled. I

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(Counsel for Defendant);

September 26, 2012


David A. Lourie, Maine Bar #1041

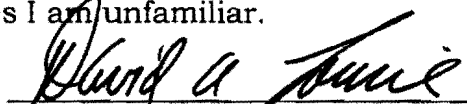
alleged essentially the same claims dismissed without prejudice by the United States Court for the Southern District of New York.

6. There was no settlement. Instead, Defendant removed the case to the United States District Court for the State of Maine, filed motions to dismiss and to transfer the case to the United States Court for the Southern District of New York.
7. I filed objections to both motions. However, Judge Hornby granted Defendant's Motion to Transfer the case to the Southern District of New York, and left the Motion to Dismiss to be decided in that Court.
8. I have been forwarding copies of all docket entries in the Maine District Court, and in this Court, by e-mail to both Mr. Tovar and to Mr. Moody as soon as they were received by me.
9. I have repeatedly asked that Mr. Moody take over the case, or that Mr. Tovar make arrangements with Mr. Moody or another lawyer to take it over.
10. I have repeatedly requested that Mr. Moody (who is apparently now in Australia) enter his appearance via ECF, as I understand that he is admitted to the United States Court for the Southern District of New York. However, he has not done so, although Mr. Moody is also far more familiar with the merits, nor has he stated that he will do so.
11. I have also requested that Mr. Tovar obtain substitute counsel admitted to practice in the Southern District of New York if Mr. Moody was unable

or unwilling to do so.

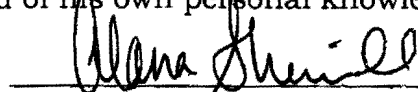
12. Leave to withdraw is requested, as I find myself in the impossible position of prosecuting a case in a distant Court in which I am not licensed to practice, with whose rules I am unfamiliar.

September 26, 2012


David A. Lourie, Maine Bar #1041
Attorney for Plaintiff Tovar
189 Spurwink Avenue
Cape Elizabeth, Maine 04107
david@lourielaw.com

Personally appeared the above named David A. Lourie and made oath that the statements above are true and correct, and of his own personal knowledge.

Date: 9/26/12


Notary Public

CERTIFICATE OF SERVICE

ALANA S. MERRILL
Notary Public, Maine
My Commission Expires December 10, 2017

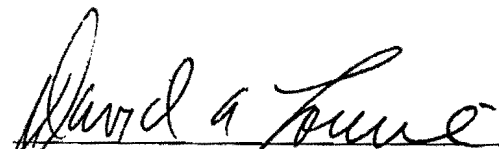
I hereby certify that I have deposited copies of the above Motion by depositing same in the United States Mail, postage prepaid to the following persons:

Joao Tovar
10 Boulevard Belgique
98000 Monaco

Mark Warren Moody, esq
M W MOODY, LLC
5 Peck Slip, #2
New York, New York 10038

Judith Wallace, Esq.
Carter Ledyard & Milburn, LLP
2 Wall Street
New York, NY 10005-2072
(Counsel for Defendant:)

September 26, 2012


David A. Lourie, Maine Bar #1041